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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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EXAMINER

RUDDOCK, ULA CORINNA

ART UNIT PAPER NUMBER

1771

DATE MAILED: 09/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/766,652

Applicant(s)

AHLUWALIA ET AL.

Examiner

Ula C. Ruddock

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The Examiner has carefully considered Applicant's response filed July 3, 2006. The rejection has been maintained.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

3. Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahluwalia (US 5,965,257) in view of Langer (US 4,600,634). Ahluwalia disclose a structural article used in a wide variety of products including fire walls, vapor barriers, roofing underlayment, and facing sheets (col 3, ln 34-42). The articles comprise a substrate having an ionic charge which is coated with a coating having essentially the same ionic charge. The coating consists of a filler material and a binder material. The substrate is preferably fiberglass and the filler is selected from fly ash, charged calcium carbonate, and ceramic microspheres. The binder is preferably acrylic latex (abstract). Ahluwalia further discloses that it is well known to include clay as a filler material in structural articles in the building industry (col 1, ln 12-26). The articles are planar in shape and the substrate is coated on one side or both sides depending on the intended application (col 3, ln 42-44). The structural material may be coated on one or both sides with a water repellent material, an algaecide, an antifungal material, an antibacterial material, a surface friction agent, a flame retardant material, and a coloring dye (col 3, ln 54-67 to col 4, ln 1-3). The structural article contains 10-25% by weight glass fibers (claim 13) and the coating comprises nearly 85% by weight of the article (col 3, ln 17-18). Ahluwalia discloses the claimed invention except for the teaching

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that a metallic component is adhered to the coated substrate on one or both sides of the substrate and that the metallic component is from 5-10% by weight of said composite material.

Langer (US 4,600,634) discloses flexible fibrous endothermic sheet materials for fire protection. The flexible sheet is made of fiberglass and acrylic binder and is useful in building construction (abstract). Fillers useful in the composition include alumina trihydrate (col 3, ln 59). A backing, comprising an aluminum foil, is added to the backing of the sheet material to give an added degree of strength to the sheet material (col 4, ln 8-10). It would have been obvious to one having ordinary skill in the art to have added Langer's aluminum sheet to one or both sides of the coated substrate of Ahluwalia, motivated by the desire to create a structural article with increased strength and durability.

Furthermore, it should be noted that optimizing the amount of metallic component in the article is a result effective variables. The amount of metallic component directly affects the strength of the article. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have used a material comprising 5-10% of a metallic component, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980). In the present invention, one would have optimized the amount of metallic component motivated by the desire to obtain an article with increased strength, durability, and flame resistance.

Rejection is maintained.

Response to Arguments

4. Applicant's arguments filed July 3, 2006, have been fully considered but they are not persuasive for the reasons set forth. Applicant argues that the combination of Ahluwalia and Langer does not teach or suggest all the claimed limitations. More specifically, Applicant argues that Ahluwalia does not teach that clay can be used as a filler to prepare a coating. This argument is not persuasive because although Ahluwalia does not prefer the use of clay as a filler in structural articles in building materials and discloses the use of several types of filler material used in the art, the use of a clay filler in combination with glass fibers and acrylic latex binder is still disclosed. It would be improper to ignore the disclosure. It should be noted that a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including nonpreferred embodiments. See *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed Cir.), *cert. denied*, 493 U.S. 975 (1989). The Examiner submits that the invention is rendered obvious. Therefore, the rejections are maintained.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C. Ruddock whose telephone number is 571-272-1481. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

UCR *UCR*

Ula Ruddock
Ula C. Ruddock
Primary Examiner
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